



ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia  
Nation Religion King

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia  
Chambres extraordinaires au sein des Tribunaux cambodgiens

Royaume du Cambodge  
Nation Religion Roi

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត  
Office of the Co-Investigating Judges  
Bureau des co-juges d'instruction

Case File No: 003/07-09-2009-ECCC-OCIJ

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Before: **The Co-Investigating Judges**  
 Date: **26 September 2014**  
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**ORDER ON SUSPECT'S REQUEST CONCERNING SUMMONS  
SIGNED BY ONE CO-INVESTIGATING JUDGE**

**Distribution:**

**Co-Prosecutors**

CHEA Leang  
Nicholas KOUMJIAN

**Lawyers for Suspects**

ANG Udom  
Michael KARNAVAS

**Civil Party Lawyers**

HONG Kimsuon  
KIM Mengkhy  
MOCH Sovannary  
SAM Sokong  
TY Srinna  
VEN Pov

Philippe CANONNE  
Annie DELAHAIE  
Laure DESFORGES

Ferdinand DJAMMEN-  
NZEPA  
Nicole DUMAS  
Isabelle DURAND  
Françoise GAUTRY  
Martine JACQUIN  
Christine MARTINEAU  
Barnabe NEKUI  
Lyma NGUYEN  
Nushin SARKARATI  
Fabienne TRUSSES



**Noting** the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, dated 27 October 2004 (“ECCC Law”);

**Noting** the Co-Prosecutors’ Second Introductory Submission, filed on 7 September 2009;<sup>1</sup>

**Noting** the judicial investigation relating to alleged violations of the **1956 Penal Code, Crimes against Humanity and Grave Breaches of the Geneva Conventions of 12 August 1949**, offences defined and punishable under Articles 3(new), 5, 6, 29 and 39 of the ECCC Law and Articles 500, 501, 503, 505, 506, 507 and 508 of the 1956 Penal Code;

**Noting** Articles 5 and 7 of the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, dated 6 June 2003 (“ECCC Agreement”);

**Noting** Article 23 new of the ECCC Law;

**Noting** Rules 1, 41, 55 and 72 of the ECCC Internal Rules (“Internal Rules”);

**Considering** *Meas Muth’s Request for Information Concerning the Validity of a Summons Issued by one Co-Investigating Judge* (“Request for Information”);<sup>2</sup>

**Noting** the Disagreements registered on 7 and 22 February 2013;

## SUBMISSIONS

1. The Request for Information raises questions concerning the validity of any summons issued by one Co-Investigating Judge for the purpose of charging Meas Muth (“Suspect”). Submitting that the “*validity of a summons signed by only one Co-Investigating Judge is not clearly addressed by the Agreement, Establishment Law, and Internal Rules*”, the Suspect’s Lawyers request each Co-Investigating Judge’s legal reasoning concerning the validity of the summons in order to meaningfully advise the Suspect, especially in case of any appeal before the Pre-Trial Chamber (“PTC”).<sup>3</sup>
2. The Request for Information also distinguishes previous PTC decisions in Case 002 confirming the validity of investigative action taken by one judge, notably on the basis that “*summoning Mr. MEAS Muth for the purpose of charging him is not*

<sup>1</sup> Case File No. 003-D1, *Co-Prosecutors’ Second Introductory Submission Regarding the Revolutionary Army of Kampuchea*, 20 November 2008; Case File No. 003-D1/1, *Acting International Co-Prosecutor’s Notice of Filing of the Second Introductory Submission*, 7 September 2009.

<sup>2</sup> Case File No. 003-D117, *Meas Muth’s Request for Information Concerning the Validity of a Summons Issued by one Co-Investigating Judge*, dated 13 August 2014.

<sup>3</sup> Request for Information, p. 1.



*related to whether the investigation will proceed; it does not constitute investigative action”.*<sup>4</sup>


## DISCUSSION

3. The validity of a summons to a Suspect signed by one Co-Investigating Judge is clearly expressed in the applicable law, and specifically in Articles 5 and 7 of the ECCC Agreement, Article 23 new of the ECCC Law and Internal Rule 72.<sup>5</sup> The Suspect’s Lawyers submission that the summoning of a suspect for initial appearance is not an investigative action, and therefore not falling under the umbrella of Internal Rule 72, is unfounded. The International CIJ has addressed this issue in Case 004, where he found that “*Internal Rule 72, which regulates disagreements between the CIJs, clearly applies to all actions performed by the CIJs in the conduct of the investigation*”, and concluded that “[i]nternal Rule 72 makes no exception or distinction in relation to summonses of suspects for an initial appearance.”<sup>6</sup>
4. This principle has been unequivocally confirmed by the Pre-Trial Chamber, which concluded that the International CIJ’s power to issue a valid summons to a Suspect alone “*is expressed in clear terms in the ECCC legal compendium and the Pre-Trial Chamber’s jurisprudence.*”<sup>7</sup>

## FOR THE FOREGOING REASONS, I, MARK B. HARMON, HEREBY:

5. **CONFIRM** that pursuant to the applicable law, a summons to a suspect issued by one Co-Investigating Judge is valid and binding.
6. **INSTRUCT** the OCIJ Greffier to provide redacted copies of D212/1 and A122/6.1/3, issued in Case File 004 and cited in this Decision, to the Suspect’s Lawyers.

Dated 26 September 2014, Phnom Penh



*Mark B. Harmon*

**Judge Mark B. Harmon**

**សហចៅក្រមស៊ើបអង្កេតអន្តរជាតិ**

**International Co-Investigating Judge  
Co-juge d’instruction international**

<sup>4</sup> Request for Information, p. 2.

<sup>5</sup> See also Case File No. 004-D212/1, *International Co-Investigating Judge’s Clarification on Validity of Summons Signed by One of the Co-Investigating Judges*, 1 September 2014 (“Clarification on Validity of Summons”), para. 11.

<sup>6</sup> Clarification on Validity of Summons, para. 9.

<sup>7</sup> Case File No. 004-A122/6.1/3, *Decision on [Redacted] Urgent Request [Redacted]*, 15 August 2014, para. 14.